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JJGJr.:03-01

Paper 6

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OFFICE OF PETITIONS
A/C PATENTS

In re Application of
Sevastian
Application No. 09/616,746
Filed: 14 July, 2000
For: LENS

LETTER

Dear Nick Sevastian:

You are named as inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. §116 (United States Code), and 37 C.F.R. §1.47(b), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 C.F.R. §1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 C.F.R. §1.63.

Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733.

Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or toll-free: (800) 972-6382 (outside the Washington D.C. area).

Telephone inquiries regarding this communication should be directed to the Petitions Attorney John J. Gillon, Jr., at (703)305-9199.

/JJG/

John J. Gillon, Jr.
Attorney
Office of Petitions
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Paper 5

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In re Application of
Putter, et al.
Application No. 09/616,746
Filed: 14 July, 2000
Attorney Docket No.: 000-009A

ON PETITION

This Decision follows the response to the Notice of Missing Parts, treated under 37 C.F.R. §1.47,[1] specifically §1.47(a), and supplemented on 28 December, 2000, with a petition to correct inventorship under 37 C.F.R. §1.48(a)."[2]

The petitions are **GRANTED**.[3]

With regard to the petition under 37 C.F.R. §1.48(a), Petitioner has demonstrated that the erroneous inclusion of James Nelson (Mr. Nelson) occurred without deceptive intent, with a declaration as available from Mr. Nelson and petition from registered Counsel Jeffrey Thurnau (Mr. Thurnau, Reg. No. 42,183).

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[1] The regulations at 37 C.F.R. §1.47 provide:

**§1.47 Filing when an inventor refuses to sign or cannot be reached.**

(a)If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in § 1.17(i) and the last known address of the nonsigning inventor. The Patent and Trademark Office shall, except in a continued prosecution application under § 1.53(d), forward notice of the filing of the application to the nonsigning inventor at said address and publish notice of the filing of the application in the Official Gazette. The nonsigning inventor may subsequently join in the application on filing an oath or declaration complying with § 1.63.

(b)Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in § 1.17(i), and the last known address of all of the inventors. The Office shall, except in a continued prosecution application under § 1.53(d), forward notice of the filing of the application to all of the inventors at the addresses stated in the application and publish notice of the filing of the application in the Official Gazette. An inventor may subsequently join in the application on filing an oath or declaration complying with § 1.63.

[47 Fed. Reg. 41275, Sept. 17, 1982, effective Oct. 1, 1982; 48 Fed. Reg. 2709, Jan. 20, 1983, effective Feb. 27, 1983; revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997]

[2] The regulations at 37 C.F.R. §1.48 provide in pertinent part:

**§1.48 Correction of inventorship in a patent application, other than a reissue application.**

(a) If the inventive entity is set forth in error in an executed §1.63 oath or declaration in an application, other than a reissue application, and such error arose without any deceptive intention on the part of the person named as an inventor in error or on the part of the person who through error was not named as an inventor, the application may be amended to name only the actual inventor or inventors. When the application is involved in an interference, the amendment must comply with the requirements of this section and must be accompanied by a motion under §1.634. Such amendment must be accompanied by:

(1) A petition including a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;

(2) An oath or declaration by the actual inventor or inventors as required by §1.63 or as permitted by §§1.42, 1.43 or 1.47;

(3) The fee set forth in §1.17(i); and

(4) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see §3.73(b)).

* * *

[62 Fed. Reg. 53185, Oct. 10, 1997]

[3] Consistent with Petitioner's authorization, the $130.00 fee for the petition under 37 C.F.R. §1.47(a) and the $130.00 surcharge for late filing of Missing Parts (oath/declaration) are charged to Deposit Account 12-2475. The $130.00 fee for the petition under 37 C.F.R. §1.48(a) previously was charged.

With regard to the petition under 37 C.F.R. §1.47, Petitioner has shown that the non-signing inventor, Nick Sevastian (Mr. Sevastian) is unreachable at his last known address, or has refused or otherwise has failed to join in the filing of the above-identified application, and otherwise the above-identified application and papers have been reviewed and found in compliance with 37 C.F.R. §1.47(b).[4]

This application is hereby accorded Rule 1.47(b) status.

As provided in Rule 1.47(b), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the Declaration.

Notice of the filing of this application will also be published in the Official Gazette.

In addition, this file is being forwarded to OIPE for the issuance of a corrected filing receipt deleting the name of James E. Nelson as co-inventor, consistent with this decision.

Telephone inquiries regarding this communication should be directed to the Petitions Attorney John J. Gillon, Jr., at (703)305-9199.

John J. Gillon, Jr.
Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[4] A grantable petition under 37 C.F.R. 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration; ( 2) an acceptable oath or declaration; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) proof of irreparable damage.